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# DESIGNATION OF SENIOR ADVOCATES – INDIRA JAISING CASE



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## INTRODUCTION

1. Designation of an advocate as a “Senior Advocate” is undoubtedly seen as a matter of immense pride and also assures a sense of authority upon the designated advocate.
2. In the legal fraternity, advocates who have completed certain years of practice before the particular High Court or the Supreme Court are considered for being conferred the title of “Senior Advocate” of that High Court or the Supreme Court. The particular court exercise discretion in such matter on the basis of the prevalent rules or guidelines.
3. The designated senior advocate is awarded this privilege as a mark of excellence for significant contribution to the legal profession. It also stands as a testimony to the assurance that they can provide outstanding services as advocates and builds the faith of the client, litigants, judiciary, junior advocates and the public.
3. The Supreme Court considering the discrepancy in the process, passed a judgment in *Indira Jaising vs. Supreme Court of India, (2017) 9 SCC 766*. The judgment laid down guidelines for consistency in the designation process and also provided for constitution of the Permanent Committee.
4. The Permanent Committee, vide the said judgment, was to examine each case of potential designation on the basis of the data provided by the Secretariat and the data was to be divided on a point-based format.
5. The Permanent Committee was to allocate points to each individual candidate under the following heads:
  - Number of years of practise/experience
  - Judgments, legal formulations advances, pro-bono work, domain expertise, etc.
  - Publications
  - Personality displayed in the interview/interaction

## THE ADVOCATES ACT 1961

1. Section 16 of The Advocates Act, 1961 provides the power to the High Courts and Supreme Court to designate an advocate as senior advocate with his consent.
2. With the Advocates (Amendment) Act, 1973, the criteria for designation as senior advocate was modified to ability, standing at the Bar or special knowledge or experience in law.

## **INDIRA JAISING VS. SUPREME COURT OF INDIA, (2017) 9 SCC 766**

1. Earlier, the designation of senior advocates was subject to the deliberations of Full Judge Bench and the decision was arrived at through vote by secret ballots.
2. In 2017, a writ petition filed by Ms. Indira Jaising, Senior Advocate, sought for transparency and objectivity in the designation process and constitution of a permanent Selection Committee for such purpose.

## **INDIRA JAISING VS. SUPREME COURT OF INDIA, (2023) 8 SCC 1**

1. In the later judgment on the same issue, the Supreme Court reconsidered the viability and practicality of the criteria and points laid down in the previous decision.
2. The basis and reasons for laying down the criterion were found to be established and justified. Thus, in this decision, in *Indira Jaising vs. Supreme Court of India, (2023) 8 SCC 1*, the Supreme Court merely modified certain matters to fill in the gaps and address the concerns that advocates were facing in the designation process.

3. The previous decision was fine-tuned to a limited extent under the following heads.
  - a. Years of experience: In *Amar Vivek Aggarwal vs. High Court of P&H, (2022) 7 SCC 439*, the Supreme Court observed that 1 point was to be allocated to advocates for each year of experience between 10-20 years.
  - b. Voting by secret ballot: It was contended that the designation process is a manner of selection and not election and hence the voting must not be done by a secret ballot but openly. The Court held that it is natural for a judge to refrain from putting forth their view openly as it can have further consequences. However, it was found that voting by secret ballot should not be the rule but an exception.
  - c. Publications: The Court found that publications cannot be a direct reflection of advocacy skills but it also cannot be ignored since the academic knowledge of the law is an important pre-requisite for an advocate. However, considering most practicing advocates find very little time to write academic articles, the 20 points allocated to this category was reduced to 5 points and the category was expanded to include teaching assignments and guest lectures. The Permanent Committee was given the discretion to decide on the manner of assigning points or taking external assistance for the same, including giving due weightage to the quality of writing.
  - d. Judgments and Legal formulations: The points under this category were held to be relevant since judgments deal with significant legal issues. However, the Court found that mere appearances could not be counted for assessing a candidate, rather the role played by the advocate in such matter must be specified. In fact, quality of the synopses filed in the court must also be considered. The points under this category were also enhanced from 40 to 50 points thus increasing the scope of this category. The Court in this context made observations on domain experts (advocates appearing majorly before specialised tribunals), diversity in gender and due consideration to first generation lawyers and held that a concession must be given in such cases.
  - e. Personal interview: The Court found that assessment on the basis of interview would provide a mode for more personal and in-depth examination of certain values that cannot be compromised, including, articulation and precision within a given time frame. It was contended that interview would delay the process of designation on which the Court held that the number of interviewees may be restricted in proportion to the number of senior advocates to be designated at a given time.
4. The Court also made certain general observations. It was held that the process of designation should be carried out at least once a year. Further, younger advocates may also be given a chance or shot at senior advocateship but only in exceptional circumstances and within the scope of the law in force at the relevant point in time.
5. The Court did not support the contention on releasing of cut-off points for designation on a prior basis, i.e., before the procedure for designation is undertaken. The reason being that only a limited number of people are designated senior advocates at a time and hence releasing cut-off marks would lead to many grievances being raised.
6. Observations in the nature of pendency of applications for designation before the courts was also made. The Court however held that the old applications are also to be considered under the new norms.

## CONCLUSION

1. The Court in the recent decision in *Indira Jaising* has clarified, relying on the 2017 judgment in the same case, that the power of suo motu designation by the Full Court has not been taken away. The Court has only fine-tuned certain categories to iron out some creases that were being faced in the designation process.
2. The judgments in *Indira Jaising* read together, provide clarity on the process of designation of advocates as Senior Advocates and also a way forward for general public to understand the procedure for the same.
3. The judgments also provide clarity on justification of the categories on which selection is made the criteria on which the assessment is based.
4. This primarily helps in instilling faith of the public in the transparency, fairness and consistency in the process of designation, thus upholding the dignity of the Senior Advocates in attaining such title and also the legal profession as a whole.